

# Tax-Geared Penalties for Non-Submission of Returns

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## 1. Background

The instructions outlined hereunder relate to the application of tax geared penalties for the non-submission of returns and updates the position established under the Finance Act 2002 which extended the provisions set out in section 1053 and section 1072 of the Taxes Consolidation Act (TCA) 1997. While these sections remain relevant for any acts or omissions arising up to the passing of the Finance (No2) Act 2008, that Act replaced these sections with section 1077E TCA 1997.

## 2. Tax Geared Penalties Finance Act 2002

Unlike fixed penalties, those that are tax geared, vary in proportion to the tax undercharge. Sections 1053 and 1072 TCA 1997 provide for tax-geared penalties in respect of any individual or company who fraudulently or negligently make an incorrect return. The Finance Act (FA) 2002 extended both of these sections. Section 130 (a) FA 2002 provides for a tax geared penalty to be imposed on individuals under section 1053 TCA 1997 where a return is not made by reason of fraud or neglect and an underpayment of tax arises. The tax-geared penalty under this section applies to income tax and other returns as set out in Column 1 of Schedule 29. (For easy reference Column 1 of Schedule 29 is included in Appendix A).

The penalty is €125 and the amount or, in the case of fraud twice the amount of the **difference**. This **difference** is defined as the difference between the amount of the tax paid by the person for the relevant year of assessment and the amount of income tax which would have been payable if the correct return or statement had been delivered.

Section 131 FA 2002 provides for a tax geared penalty to be imposed on companies under section 1072 where a return (defined in section 884 as any statement, declaration or list) is not made by reason of fraud or neglect and an underpayment of tax arises. The tax-geared penalty under this section applies to corporation tax with a penalty of €630 in the case of neglect or €1,265 in the case of fraud. An additional penalty is due in respect of the **difference**. The difference is defined as the difference between the amount of corporation tax paid by the company for the accounting period to which the return relates and the amount of corporation tax which would have been payable if the correct return had been delivered. In the case of fraud, the penalty is twice the amount of the difference. As noted in the introduction, the above sections do not apply in respect of any acts or omissions arising after the passing of the Finance (No2) Act 2008.

### 3. Tax Geared Penalties Finance Act 2008

Section 98 FA 2008 provides for a penalty under section

- 1077E(3) TCA 1997 where a person deliberately fails to comply with a requirement to deliver a return.
- 1077E(6) TCA 1997 where a person carelessly but not deliberately fails to comply with a requirement to deliver a return.

The tax geared penalty under these sections applies to income tax returns and other returns as set out in Column 1 of Schedule 29.

Where a person fails the requirement to deliver a return either under subsection 3 or subsection 6 of section 1077E TCA 1997, a penalty should be calculated in accordance with subsection 12. The difference is calculated based on:

1. the tax paid by that person for the relevant periods before the start by Revenue of any inquiry into any matter that would have been included in the return if the return had been delivered and the return was correct and,
2. the amount of tax which would have been payable for the relevant periods if the return had been delivered by that person and the return had been correct.

### 4. Non-Filer Cases

The above legislation should to be read in conjunction with the Tax and Duty Manual [Income Tax and Corporation Tax Programme Intervention and Selection Criteria Manual](#)

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## APPENDIX A

**SCHEDULE 29 TAX CONSOLIDATION ACT 1997**

*Provisions referred to in Sections 1052, 1053, 1054 and 1077E*

**Column 1**

section 121	Benefit of use of car
section 473 or Regulations under that section.	Allowance for rent paid by certain tenants
Section 477	Relief for Service Charges
[section 531AF]	Delivery of returns
section 877	Returns by persons chargeable
section 878	Returns by persons acting for incapacitated persons and non-residents
section 879(2)	Returns of Income
section 880	Partnership returns
[Chap. 3 Part 41A] [section 986 and Regulations under that section]	Chargeable persons return(s)
section 986 and Regulations under that section	PAYE
paragraph (a) (iii) (l) and (c) of Subsection 2 and paragraphs (a) (i) and (b) (i) of subsection 4 of section 1002	Returns in respect of attachments
section 1023	Application for separate assessment – returns due
Waiver of Certain Tax, Interest and Penalties Act, 1993, Sections 2(3) (a) and 3(6) (b)	